

EXHIBIT A

2023-85100 / Court: 125

CAUSE NO. _____

ARNOLD & IKTIN, LLP

Plaintiff,

v.

DISCOVER FINANCIAL SERVICES
D/B/A DISCOVER BANK and
ANTHONY COLON,*Defendants.*§
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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

PLAINTIFF'S APPLICATION FOR A TEMPORARY RESTRAINING ORDER

Plaintiff Arnold & Itkin, LLP respectfully requests that this Court issue a temporary restraining order that temporarily enjoins Defendants Discover Financial Services, d/b/a Discover Bank and Anthony Colon from transferring, spending, withdrawing, or otherwise moving or utilizing \$447,502.67 that was wired to Defendant Colon's Discover Bank account in error. After granting this temporary restraining order, this Court should promptly set a hearing on Arnold & Itkin, LLP's application for a temporary injunction, which he will subsequently file. *See* Tex. R. Civ. P. 680.

I. Background

On or about September 12, 2023, Defendant Colon received an email from Plaintiff regarding settlement proceeds for a lawsuit. Plaintiff had settled the personal-injury lawsuit of a different Anthony Colon prior to that date and sent an

email regarding that lawsuit and the proceeds non-party Anthony Colon was to receive for it. Defendant Colon fraudulently represented himself as the Anthony Colon entitled to the settlement proceeds and provided his own signature and bank account information.

Upon Plaintiff's receipt of the fraudulently signed document, Plaintiff called Defendant Colon to confirm the bank account information to wire the settlement proceeds to. Defendant Colon again fraudulently represented himself to be the Anthony Colon entitled to the lawsuit settlement proceeds. Based on Defendant Colon's fraudulent representations, Plaintiff instructed its bank to wire \$447,502.67 in settlement proceeds to Defendant Colon's bank account held by Discover Bank.

Upon realizing that Defendant Colon had fraudulently represented himself to be the beneficiary of the settlement proceeds, Plaintiff called Defendant Colon and requested the funds be returned. Plaintiff also called Defendant Discover Bank alerting them that Defendant Colon was not entitled to the funds and requesting the funds in Defendant Colon's account be frozen and returned to Plaintiff.

Despite several calls and letters, Defendants refused to return the settlement proceeds they knew had been sent in error. Defendants have known since at least October 18, 2023, that the funds were wired to Defendant Colon based on his fraudulent representations as the Anthony Colon entitled to the settlement proceeds but have refused to return the funds to Plaintiff.

II. Legal Standards

A. Temporary Restraining Order

It is well-established that a trial court has the authority to issue a temporary restraining order, even without notice to the affected party. “[T]he purpose of a temporary restraining order is to preserve the status quo.” *In re Nat’l Lloyds Ins. Co.*, No. 13-15-00390-CV, 2015 WL 6759153, at *4 (Tex. App.—Corpus Christi 2015, pet. denied) (citing *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002)). “To obtain a temporary injunction, the applicant must plead and prove: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.” *Tex. Black Iron, Inc. v. Arawak Energy Int’l Ltd.*, 527 S.W.3d 579, 584 (Tex. App.—Houston [14th Dist.] 2017, no pet.). The facts demonstrating the “immediate and irreparable injury, loss, or damage [that] will result to the applicant before notice can be served and a hearing had thereon[.]” as required to obtain a temporary restraining order, may be shown “by affidavit[.]” Tex. R. Civ. P. 680.

“Whether to grant or deny a temporary injunction is within the trial court’s sound discretion.” *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). But “[a]n injunction that fails to strictly comply with the requirements of Rule 683, and other rules of civil procedure, is subject to being declared void.” *In re Chaumette*, 456 S.W.3d 299, 306 (Tex. App.—Houston [1st Dist.] 2014, orig. proceeding). To

that end, the Rules of Civil Procedure require a trial court issuing a temporary restraining order to meet four requirements:

(1) state why the order was granted without notice if it is granted *ex parte*, Tex. R. Civ. P. 680; (2) state the reasons for the issuance of the order by defining the injury and describing why it is irreparable; *id.*; (3) state the date the order expires and set a hearing on a temporary injunction, *id.*; and (4) set a bond, Tex. R. Civ. P. 684.

In re Office of Att’y Gen., 257 S.W.3d 695, 697 (Tex. 2008) (per curiam) (orig. proceeding).

B. Asset-Freezing Injunction

The general rule “prohibit[s] an injunction to secure the legal remedy of damages by freezing a defendant’s assets that are completely unrelated to the subject matter of the suit.” *Tex. Black Iron, Inc. v. Arawak Energy Int’l Ltd.*, 527 S.W.3d 579, 586 (Tex. App.—Houston [14th Dist.] 2017, no pet.). “However, this general rule does not preclude relief under circumstances where the very asset at issue in the preliminary injunction are at issue in and may be used to satisfy claims in the parties’ dispute.” *Id.* at 587. “Texas cases hold that a plaintiff does not have an adequate remedy at law if the defendant faces insolvency or becoming judgment proof before trial.” *Id.*

III. Argument

A. Plaintiff is entitled to the temporary relief of an asset-freezing injunction.

To begin, Plaintiff is entitled to the specific temporary relief he seeks: a temporary anti-suit injunction.

1. Plaintiff has a cause of action for fraud against Defendant Colon and a cause of action for negligence against Defendant Discover.

First and foremost, Plaintiff has causes of action against both Defendants. Beginning with Colon, Plaintiff has a fraud cause of action for Defendant Colon's intentional and/or reckless representations that he was the Anthony Colon entitled to the \$447,502.67 in settlement proceeds. Defendant Colon represented himself to be the Anthony Colon entitled to the settlement proceeds both in writing and over the phone. The representation in writing came when he signed documents via digital signature explaining the total amount of the settlement, the amount of attorney's fees, the expenses, and the medical expenses being withheld. This information includes medical expenses that Defendant Colon never received and alerted him to the fact that he was not the intended recipient of the email. Instead of either (1) declining to sign the documents, or (2) alerting Plaintiff that he had received the email in error, Defendant Colon signed the documents knowing he was not who he represented himself to be.

Defendant Colon then fraudulently represented himself to be the person

entitled to the settlement proceeds over the phone. Plaintiff called Defendant Colon to verify the bank account information he had provided in the signed documents. Again, Defendant Colon had an opportunity to come clean and knowingly refused to do so. And once Plaintiff realized the funds had been sent in error, Plaintiff even notified Defendant Colon of the mistake and requested the funds be returned. Though Defendant Colon verbally agreed to do so, to date he has refused to return any of the funds he fraudulently obtained.

Plaintiff also has a claim against Defendant Discover Bank for negligence. Discover Bank owed Plaintiff a legal duty to act as a reasonable banking institution and to avoid participating in, or facilitating, fraud. Once Plaintiff realized the funds had been sent in error, Plaintiff alerted Defendant Discover Bank that Defendant Colon had fraudulently obtained the settlement funds. Plaintiff also requested Defendant Discover Bank freeze and return the funds. Despite several calls and letters, Defendant Discover Bank breached their duty to Plaintiff by refusing to freeze the funds in Defendant Colon's account or return the funds. As a result of Defendant Discover Bank's breach of its duty, Plaintiff suffered damages of \$447,502.67.

2. Plaintiff has a probable right to the damages sought.

Plaintiff is likely to prevail on its claims against Defendants. Plaintiff can and will show that Defendant Colon knowingly or recklessly represented himself to be

the Anthony Colon entitled to the settlement funds and that Defendant Discover Bank was negligent in failing to participate in or facilitate fraud.

3. Plaintiff faces a probable, imminent, and irreparable injury in the interim.

If Plaintiff's application for a temporary restraining order is denied, Plaintiff faces a probable, imminent, and irreparable injury in the interim. "For purposes of determining whether to grant a temporary injunction, an adequate remedy at law is one that is as complete, practical, and efficient to the prompt administration of justice as is equitable relief." *Tex. Black Iron, Inc. v. Arawak Energy Int'l Ltd.*, 527 S.W.3d 579, 584 (Tex. App.—Houston [14th Dist.] 2017, no pet.). "Texas cases hold that a plaintiff does not have an adequate remedy at law if the defendant faces insolvency or becoming judgment proof before trial." *Id.* at 587.

Here, Defendant Colon is an individual with \$447,502.67 in his bank account with Defendant Discover Bank that he is not entitled to. There is a dangerous likelihood that Defendant Colon spends all, or at least a substantial portion of the funds Plaintiff is legally entitled to if Plaintiff's application for a temporary restraining order, pending a temporary injunction hearing, is not granted. A temporary restraining order, pending a temporary-injunction hearing, thus is necessary to remedy this irreparable and immediate injury.

IV. Conclusion

For these reasons, Plaintiff respectfully requests that this Court grant this

application for a temporary restraining order and temporarily enjoin Defendants Colon and Discover Bank from transferring, spending, withdrawing, or otherwise moving or utilizing \$447,502.67 that was wired to Defendant Colon's Discover Bank account in error.

Undersigned counsel will provide notice of this application to Defendants Colon and Discover Bank so that, in the Court's discretion, it need not be issued *ex parte*. See *In re Abbott*, 628 S.W.3d 288, 299 (Tex. 2021) (orig. proceeding) (preferring notice on applications for temporary restraining orders); see also Tex. R. Civ. P. 683.

A proposed temporary restraining order, complying with Rules 680 and 684, is attached. See *Office of Att'y Gen.*, 257 S.W.3d at 697. Among other things, that proposed order provides a timeline for Plaintiff applying for a temporary injunction and a hearing date on that injunction and fixes a bond to be paid by Plaintiff. See Tex. R. Civ. P. 680, 684.

Respectfully submitted,

ARNOLD & ITKIN LLP

/s/ Kurt Arnold

Kurt Arnold

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Jason A. Itkin

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Telephone: (713) 222-3800

Facsimile: (713) 222-3850

e-service@arnolditkin.com

Counsel For Plaintiff

Unofficial Copy Office of Marilyn Burgess District Clerk

CAUSE NO. _____

ARNOLD & IKTIN, LLP

Plaintiff,

v.

DISCOVER FINANCIAL SERVICES
D/B/A DISCOVER BANK and
ANTHONY COLON,

Defendants.

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IN THE DISTRICT COURT OF

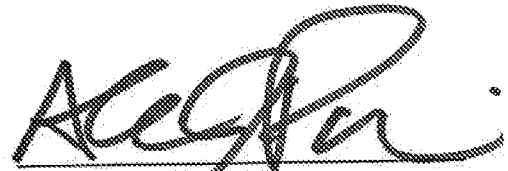
HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

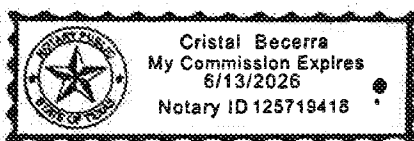
DECLARATION OF ALEC PARADOWSKI


My name is Alec Paradowski. I am over eighteen years of age, am of sound mind, and am capable of making this declaration. I am an attorney at Arnold & Itkin, LLP.

I have read the above Application for Temporary Restraining Order. I verify that the facts stated herein are within my personal knowledge and are true and correct.


Alec Paradowski

Sworn and subscribed before me on December 12 2023.




Notary Public, State of Texas

CERTIFICATE OF SERVICE

This is to certify that on this 12th day of December, 2023, a true and correct copy of the above and foregoing was likewise served by email/certified mail to the following parties:

Anthony Colon
9135 Bryant Ave.
Laurel, Maryland 20723
poppycolonpromotions@gmail.com

Discover Financial Services d/b/a Discover Bank
C/O CT Corporation System
1999 Bryan St., Ste. 900
Dallas, Texas 75201

- and -

Discover Financial Services
ATTN: Legal Subpoena Processing
2500 Lake Cook Road
Riverwoods, Illinois 60015

/s/ Kurt Arnold

Kurt Arnold

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Cristal Becerra on behalf of Kurt Arnold

Bar No. 24036150

cbecerra@arnolditkin.com

Envelope ID: 82478805

Filing Code Description: Petition

Filing Description: Plaintiff's Application for a Temporary Restraining Order

Status as of 12/12/2023 11:37 AM CST

Associated Case Party: Arnold & Itkin, LLP

Name	BarNumber	Email	TimestampSubmitted	Status
Cristal Becerra		cbecerra@arnolditkin.com	12/12/2023 10:56:36 AM	SENT
Alec Paradowski		aparadowski@arnolditkin.com	12/12/2023 10:56:36 AM	SENT
Roland Christensen		rchristensen@arnolditkin.com	12/12/2023 10:56:36 AM	SENT

2023-85100 / Court: 125

CAUSE NO. _____

ARNOLD & IKTIN, LLP

Plaintiff,

v.

DISCOVER FINANCIAL SERVICES
 D/B/A DISCOVER BANK and
 ANTHONY COLON,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

TEMPORARY RESTRAINING ORDER

This Court, having considered Plaintiff Arnold & Itkin, LLP's Application for a Temporary Restraining Order and all evidence and arguments of counsel with notice to Defendants Anthony Colon and Discover Financial Services d/b/a Discover Bank, is of the opinion that immediate and irreparable injury, loss, or damage will result to Arnold & Itkin, LLP unless Defendants Discover Financial Services, d/b/a Discover Bank and Anthony Colon are temporarily restrained in the specifically limited manner as set forth below. The Court therefore **GRANTS** Arnold & Itkin, LLP's Application for a Temporary Restraining Order.

I.

Background

This litigation centers around proceeds from a litigation settlement in the amount of \$447,502.67 being fraudulently obtained and not returned. On December

1, 2023, Arnold & Itkin, LLP filed with this Court an Application for a Temporary Restraining Order pending an application for a temporary injunction on the matter. The Court held a hearing on Plaintiff's Application on _____.

II.

Temporary Relief is Necessary to Prevent Immediate and Irreparable Harm

The issuance of a temporary restraining order that temporarily enjoins Defendants Anthony Colon and Discover Financial Services d/b/a Discover Bank from transferring, spending, withdrawing, or otherwise moving or utilizing \$447,502.67 that was wired to Defendant Colon's Discover Bank account in error is appropriate here. Plaintiff has pled and proved (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *See Tex. Black Iron, Inc. v. Arawak Energy Int'l Ltd.*, 527 S.W.3d 579, 584 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

Immediate and irreparable injury, loss, or damage will result to Plaintiff absent issuance of this temporary restraining order. Defendant Colon would otherwise be permitted to spend the \$447,502.67 in his bank account with Defendant Discover Bank at will and become insolvent. *Tex. Black Iron, Inc. v. Arawak Energy Int'l Ltd.*, 527 S.W.3d 579, 587 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

III.
Order

Arnold & Itkin, LLP's Application for a Temporary Restraining Order is **GRANTED**. It is thereby **ORDERED** that the Clerk of this Court issue a Temporary Restraining Order, operative until the _____ day of _____, 202__, and pending the hearing ordered below, restraining Defendants Colon and Discover Bank from transferring, spending, withdrawing, or otherwise moving or utilizing \$447,502.67 that was wired to Defendant Colon's Discover Bank account in error.

Arnold & Itkin, LLP shall, prior to the issuance of the restraining order, file with the Clerk a bond executed by Plaintiff in the sum of \$500.00, payable to Defendants, approved and conditioned as the law requires.

It is further **ORDERED** that Arnold & Itkin's Application for a Temporary Injunction will be heard at the _____ day of _____, 202__, at _____. Seven calendar days before the hearing, Arnold & Itkin, LLP shall file said Application.

This Temporary Restraining Order expires fourteen days after its issuance.

SIGNED this _____ day of _____, 202__.

Honorable Presiding Ancillary Judge

FILEDMarilyn Burgess
District Clerk

DEC 13 2023

CAUSE NUMBER 2023-85100

Time: _____

Harris County, Texas

By _____

Deputy

Arnold Elkin, LLP
PETITIONER

§

IN THE DISTRICT COURT OF

§

HARRIS COUNTY, TEXAS

§

125th JUDICIAL DISTRICT

VS.

Discover Financial Services
d/b/a
RESPONDENTDiscover Bank and Anthony ColonCLERK'S CERTIFICATE OF CASH DEPOSIT IN LIEU
OF INJUNCTION BOND PER ORDER OF THE COURTTHE STATE OF TEXAS §
COUNTY OF HARRIS §

THIS DOCUMENT IS TO CERTIFY that I, the undersigned Clerk of the District Courts of Harris County, Texas have received a cash deposit, as ordered by the Court, in the amount of Five Hundred Dollars (\$ 500.00), to be deposited with the Registry of the Court in lieu of a Temporary Restraining Order Bond or a Temporary Injunction Bond, as required by Rule 684, T.R.C.P. in the above styled and numbered cause as provided by the order entered on the 13th day of December, 2023

This cash deposit is made and received in lieu of TEMPORARY RESTRAINING ORDER or a TEMPORARY INJUNCTION, conditioned that the applicant will abide the decision which may be made in the cause, and that he will pay all sums of money and costs that may be adjudged against him if the restraining order or temporary injunction shall be dissolved in whole or in part, and this certificate is issued to have the force and effect of a TEMPORARY RESTRAINING ORDER BOND or a TEMPORARY INJUNCTION BOND in accordance with the Order of the Court.

WITNESS my hand and seal of office this

13th

day of

December

A.D., 20

23Marilyn Burgess, District Clerk
Harris County, Texas
PO BOX 4651
Houston, Texas 77210-4651By: Kerry Bone A.

Deputy District Clerk

Principal: _____

Attorney: Alec ParadowskiBar Number: 24124773RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging.

County
 Case No: 82
 REZ, GER
 12/13/2023

CASE NUMBER: 2023-85100 **CURRENT COURT:** 125th District Court

FILE DATE: 12/12/2023 Month/Day/Year

Issue Service to: Discover Financial Services d/b/a Discover Bank

City, State & Zip: Dallas, Texas 75201

TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the proper Box)

- (See additional Forms for Post Judgment Service)**

☐ **CERTIFIED MAIL** by District Clerk ☒ **E-Issuance by District Clerk (No Service Copy Fees Charged)**

(Note:) CAPIAS is not an E-Issuance Option

☐ **OTHER** , *explain*

Mailing Address: 6009 Memorial Drive, Houston, Texas 77007

Phone Number: 713-222-3800

County
 Type No: 82
 REZ, GER
 12/13/2023

CASE NUMBER: 2023-85100 **CURRENT COURT:** 125th District Court

Phone Number: 713-222-3800

12/13/2023 11:21:35 AM
 Marilyn Burgess - District Clerk
 Harris County
 Envelope No: 82527952
 By: PEREZ, GERARDO
 Filed: 12/13/2023 11:21:35 AM

Marilyn Burgess - Harris County District Clerk

Request for Issuance of Service

CASE NUMBER: 2023-85100CURRENT COURT: 125th District CourtName(s) of Documents to be served: Temporary Restraining OrderFILE DATE: 12/12/2023 Month/Day/Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

Issue Service to: Discover Financial ServicesAddress of Service: 2500 Lake Cook RoadCity, State & Zip: Riverwoods, Illinois 60015Agent (if applicable) Legal Subpoena Processing

TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the proper Box)

- ☐ Citation ☐ Citation by Posting ☐ Citation by Publication ☐ Citations Rule 106 Service
☐ Citation Scire Facias ☐ Newspaper _____
☒ Temporary Restraining Order ☐ Precept ☐ Notice
☐ Protective Order
☐ Secretary of State Citation (\$12.00) ☐ Capias (not an E-Issuance) ☐ Attachment
☐ Certiorari ☐ Highway Commission (\$12.00)
☐ Commissioner of Insurance (\$12.00) ☐ Hague Convention (\$16.00) ☐ Garnishment
☐ Habeas Corpus ☐ Injunction ☐ Sequestration
☐ Subpoena
☐ Other (Please Describe) _____

(See additional Forms for Post Judgment Service)

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP (phone) _____ ☐ CONSTABLE
☐ MAIL to attorney at: _____
☐ CERTIFIED MAIL by District Clerk ☒ E-Issuance by District Clerk (No Service Copy Fees Charged)
 (Note:) CAPIAS is not an E-Issuance Option
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____ Phone: _____
☐ OTHER , explain _____

Issuance of Service Requested By: Attorney/Party Name: Kurt Arnold Bar # or ID 24036150Mailing Address: 6009 Memorial Drive, Houston, Texas 77007Phone Number: 713-222-3800

County
 Case No: 82
 REZ, GER
 12/13/2023

CASE NUMBER: 2023-85100 **CURRENT COURT:** 125th District Court

FILE DATE: 12/12/2023 Month/Day/Year

Issue Service to: Discover Financial Services

City, State & Zip: Riverwoods, Illinois 60015

TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the proper Box)

- (See additional Forms for Post Judgment Service)**

☐ **CERTIFIED MAIL** by District Clerk ☒ **E-Issuance by District Clerk (No Service Copy Fees Charged)**

(Note:) CAPIAS is not an E-Issuance Option

☐ **OTHER** , *explain*

Mailing Address: 6009 Memorial Drive, Houston, Texas 77007

Phone Number: 713-222-3800

12/13/2023 11:21:35 AM
 Marilyn Burgess - District Clerk
 Harris County
 Envelope No: 82527952
 By: PEREZ, GERARDO
 Filed: 12/13/2023 11:21:35 AM

Marilyn Burgess - Harris County District Clerk

Request for Issuance of Service

CASE NUMBER: 2023-85100CURRENT COURT: 125th District CourtName(s) of Documents to be served: Temporary Restraining OrderFILE DATE: 12/12/2023 Month/Day/Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

Issue Service to: Anthony ColonAddress of Service: 9135 Bryant Ave.City, State & Zip: Laurel, Maryland 20723

Agent (if applicable) _____

TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the proper Box)

- | | | | |
|---|--|--|---|
| <input type="checkbox"/> Citation | <input type="checkbox"/> Citation by Posting | <input type="checkbox"/> Citation by Publication | <input type="checkbox"/> Citations Rule 106 Service |
| <input type="checkbox"/> Citation Scire Facias | Newspaper _____ | | |
| <input checked="" type="checkbox"/> Temporary Restraining Order | <input type="checkbox"/> Precept | <input type="checkbox"/> Notice | |
| <input type="checkbox"/> Protective Order | | | |
| <input type="checkbox"/> Secretary of State Citation (\$12.00) | <input type="checkbox"/> Capias (not an E-Issuance) | <input type="checkbox"/> Attachment | |
| <input type="checkbox"/> Certiorari | <input type="checkbox"/> Highway Commission (\$12.00) | | |
| <input type="checkbox"/> Commissioner of Insurance (\$12.00) | <input type="checkbox"/> Hague Convention (\$16.00) | <input type="checkbox"/> Garnishment | |
| <input type="checkbox"/> Habeas Corpus | <input type="checkbox"/> Injunction | <input type="checkbox"/> Sequestration | |
| <input type="checkbox"/> Subpoena | | | |
| <input type="checkbox"/> Other (Please Describe) _____ | | | |

(See additional Forms for Post Judgment Service)

SERVICE BY (check one):

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|---|---|
| <input type="checkbox"/> ATTORNEY PICK-UP (phone) _____ | <input type="checkbox"/> CONSTABLE |
| <input type="checkbox"/> MAIL to attorney at: _____ | |
| <input type="checkbox"/> CERTIFIED MAIL by District Clerk | <input checked="" type="checkbox"/> E-Issuance by District Clerk (No Service Copy Fees Charged) |
| (Note:) <u>CAPIAS is not an E-Issuance Option</u> | |
| <input type="checkbox"/> CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____ | Phone: _____ |
| <input type="checkbox"/> OTHER , explain _____ | |

Issuance of Service Requested By: Attorney/Party Name: Kurt Arnold Bar # or ID 24036150Mailing Address: 6009 Memorial Drive, Houston, Texas 77007Phone Number: 713-222-3800

**Marilyn Burgess –Harris County District Clerk****Request for Issuance of Service**CASE NUMBER: 2023-85100CURRENT COURT: 125th District CourtName(s) of Documents to be served: Temporary Restraining OrderFILE DATE: 12/12/2023 Month/Day/Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

Issue Service to: Anthony ColonAddress of Service: 9135 Bryant Ave.City, State & Zip: Laurel, Maryland 20723

Agent (if applicable) _____

TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the proper Box)

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☐ Citation Scire Facias ☐ Newspaper _____
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☐ Other (Please Describe) _____

(See additional Forms for Post Judgment Service)

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP (phone) _____ ☐ CONSTABLE
☐ MAIL to attorney at: _____
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☐ OTHER , explain _____

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Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Cristal Becerra on behalf of Kurt Arnold

Bar No. 24036150

cbecerra@arnolditkin.com

Envelope ID: 82527952

Filing Code Description: Request

Filing Description: Request for Issuance of Service

Status as of 12/13/2023 12:51 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Roland Christensen		rchristensen@arnolditkin.com	12/13/2023 11:21:35 AM	SENT
Cristal Becerra		cbecerra@arnolditkin.com	12/13/2023 11:21:35 AM	SENT
Alec Paradowski		aparadowski@arnolditkin.com	12/13/2023 11:21:35 AM	SENT

2023-85100 / Court: 125

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

Pgs-3

TRORX
STBNX
CASO

TEMPORARY RESTRAINING ORDER

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Immediate and irreparable injury, loss, or damage will result to Plaintiff absent issuance of this temporary restraining order. Defendant Colon would otherwise be permitted to spend the \$447,502.67 in his bank account with Defendant Discover Bank at will and become insolvent. *Tex. Black Iron, Inc. v. Arawak Energy Int'l Ltd.*, 527 S.W.3d 579, 587 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

III. Order

Arnold & Itkin, LLP's Application for a Temporary Restraining Order is **GRANTED**. It is thereby **ORDERED** that the Clerk of this Court issue a Temporary Restraining Order, operative until the 22 day of December, 2023, and pending the hearing ordered below, restraining Defendants Colon and Discover Bank from transferring, spending, withdrawing, or otherwise moving or utilizing \$447,502.67 that was wired to Defendant Colon's Discover Bank account in error.

Arnold & Itkin, LLP shall, prior to the issuance of the restraining order, file with the Clerk a bond executed by Plaintiff in the sum of \$500.00, payable to Defendants, approved and conditioned as the law requires.

It is further **ORDERED** that Arnold & Itkin's Application for a Temporary Injunction will be heard at the 22nd day of December, 2023, at 11:00am. Seven calendar days before the hearing, Arnold & Itkin, LLP shall file said Application.

This Temporary Restraining Order expires fourteen days after its issuance.

SIGNED this ____ day of _____, 2023.

Signed:
12/13/2023



9:58 am

Honorable Presiding Ancillary Judge

CAUSE NO. 2023-85100

ARNOLD & ITKIN, LLP	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
DISCOVER FINANCIAL SERVICES	§	
D/B/A DISCOVER BANK and	§	
ANTHONY COLON,	§	
<i>Defendants.</i>	§	125 th JUDICIAL DISTRICT

PLAINTIFF'S APPLICATION FOR A TEMPORARY INJUNCTION

Plaintiff Arnold & Itkin, LLP respectfully requests that this Court issue a temporary injunction that temporarily enjoins Defendants Discover Financial Services, d/b/a Discover Bank and Anthony Colon from transferring, spending, withdrawing, or otherwise moving or utilizing \$447,502.67 that was wired to Defendant Colon's Discover Bank account in error.

I. Background

On or about September 12, 2023, Defendant Colon received an email from Plaintiff regarding settlement proceeds for a lawsuit. Plaintiff had settled the personal-injury lawsuit of a different Anthony Colon prior to that date and sent an email regarding that lawsuit and the proceeds non-party Anthony Colon was to receive for it. Defendant Colon fraudulently represented himself as the Anthony Colon entitled to the settlement proceeds and provided his own signature and bank

account information.

Upon Plaintiff's receipt of the fraudulently signed document, Plaintiff called Defendant Colon to confirm the bank account information to wire the settlement proceeds to. Defendant Colon again fraudulently represented himself to be the Anthony Colon entitled to the lawsuit settlement proceeds. Based on Defendant Colon's fraudulent representations, Plaintiff instructed its bank to wire \$447,502.67 in settlement proceeds to Defendant Colon's bank account held by Discover Bank.

Upon realizing that Defendant Colon had fraudulently represented himself to be the beneficiary of the settlement proceeds, Plaintiff called Defendant Colon and requested the funds be returned. Plaintiff also called Defendant Discover Bank alerting them that Defendant Colon was not entitled to the funds and requesting the funds in Defendant Colon's account be frozen and returned to Plaintiff.

Despite several calls and letters, Defendants refused to return the settlement proceeds they knew had been sent in error. Defendants have known since at least October 18, 2023, that the funds were wired to Defendant Colon based on his fraudulent representations as the Anthony Colon entitled to the settlement proceeds but have refused to return the funds to Plaintiff.

II. Legal Standards

A. Temporary Injunction

"[T]he purpose of a temporary injunction is to preserve the status quo."

LasikPlus of Tex., P.C. v. Mattioli, 418 S.W.3d 210, 216 (Tex. App.—Houston [14th Dist.] 2013, no pet.). “To obtain a temporary injunction, the applicant must plead and prove: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.” *Tex. Black Iron, Inc. v. Arawak Energy Int’l Ltd.*, 527 S.W.3d 579, 584 (Tex. App.—Houston [14th Dist.] 2017, no pet.). “At a temporary injunction hearing, the trial court considers whether the applicant has shown a probability of success and irreparable injury; the parties do not present the underlying merits of the controversy.” *Mattioli*, 418 S.W.3d at 216.

“Whether to grant or deny a temporary injunction is within the trial court’s sound discretion.” *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). But “[a]n injunction that fails to strictly comply with the requirements of Rule 683, and other rules of civil procedure, is subject to being declared void.” *In re Chaumette*, 456 S.W.3d 299, 306 (Tex. App.—Houston [1st Dist.] 2014, orig. proceeding).

B. Asset-Freezing Injunction

The general rule “prohibit[s] an injunction to secure the legal remedy of damages by freezing a defendant’s assets that are completely unrelated to the subject matter of the suit.” *Tex. Black Iron, Inc. v. Arawak Energy Int’l Ltd.*, 527 S.W.3d 579, 586 (Tex. App.—Houston [14th Dist.] 2017, no pet.). “However, this general rule does not preclude relief under circumstances where the very assets at issue in

the preliminary injunction are at issue in and may be used to satisfy claims in the parties' dispute." *Id.* at 587. "Texas cases hold that a plaintiff does not have an adequate remedy at law if the defendant faces insolvency or becoming judgment proof before trial." *Id.*

III. Argument

A. Plaintiff is entitled to the temporary relief of an asset-freezing injunction.

To begin, Plaintiff is entitled to the specific temporary relief he seeks: a temporary anti-suit injunction.

1. Plaintiff has a cause of action for fraud against Defendant Colon and a cause of action for negligence against Defendant Discover.

First and foremost, Plaintiff has causes of action against both Defendants. Beginning with Colon, Plaintiff has a fraud cause of action for Defendant Colon's intentional and/or reckless representations that he was the Anthony Colon entitled to the \$447,502.67 in settlement proceeds. Defendant Colon represented himself to be the Anthony Colon entitled to the settlement proceeds both in writing and over the phone. The representation in writing came when he signed documents via digital signature explaining the total amount of the settlement, the amount of attorney's fees, the expenses, and the medical expenses being withheld. This information includes medical expenses that Defendant Colon never received and alerted him to

the fact that he was not the intended recipient of the email. Instead of either (1) declining to sign the documents, or (2) alerting Plaintiff that he had received the email in error, Defendant Colon signed the documents knowing he was not who he represented himself to be.

Defendant Colon then fraudulently represented himself to be the person entitled to the settlement proceeds over the phone. Plaintiff called Defendant Colon to verify the bank account information he had provided in the signed documents. Again, Defendant Colon had an opportunity to come clean and knowingly refused to do so. And once Plaintiff realized the funds had been sent in error, Plaintiff even notified Defendant Colon of the mistake and requested the funds be returned. Though Defendant Colon verbally agreed to do so, to date he has refused to return any of the funds he fraudulently obtained.

Plaintiff also has a claim against Defendant Discover Bank for negligence. Discover Bank owed Plaintiff a legal duty to act as a reasonable banking institution and to avoid participating in, or facilitating, fraud. Once Plaintiff realized the funds had been sent in error, Plaintiff alerted Defendant Discover Bank that Defendant Colon had fraudulently obtained the settlement funds. Plaintiff also requested Defendant Discover Bank freeze and return the funds. Despite several calls and letters, Defendant Discover Bank breached their duty to Plaintiff by refusing to freeze the funds in Defendant Colon's account or return the funds. As a result of

Defendant Discover Bank's breach of its duty, Plaintiff suffered damages of \$447,502.67.

2. Plaintiff has a probable right to the damages sought.

Plaintiff is likely to prevail on its claims against Defendants. Plaintiff can and will show that Defendant Colon knowingly or recklessly represented himself to be the Anthony Colon entitled to the settlement funds and that Defendant Discover Bank was negligent in failing to participate in or facilitate fraud.

3. Plaintiff faces a probable, imminent, and irreparable injury in the interim.

If Plaintiff's application for a temporary injunction is denied, Plaintiff faces a probable, imminent, and irreparable injury in the interim. "For purposes of determining whether to grant a temporary injunction, an adequate remedy at law is one that is as complete, practical, and efficient to the prompt administration of justice as is equitable relief." *Tex. Black Iron, Inc. v. Arawak Energy Int'l Ltd.*, 527 S.W.3d 579, 584 (Tex. App.—Houston [14th Dist.] 2017, no pet.). "Texas cases hold that a plaintiff does not have an adequate remedy at law if the defendant faces insolvency or becoming judgment proof before trial." *Id.* at 587.

Here, Defendant Colon is an individual who received \$447,502.67 in his bank account with Defendant Discover Bank that he is not entitled to. There is a dangerous likelihood that Defendant Colon spends all, or at least a substantial portion of the funds Plaintiff is legally entitled to if Plaintiff's application for a temporary

injunction is not granted. A temporary injunction, thus is necessary to remedy this irreparable and immediate injury.

IV. Conclusion

For these reasons, Plaintiff respectfully requests that this Court grant this application for a temporary injunction and temporarily enjoin Defendants Colon and Discover Bank from transferring, spending, withdrawing, or otherwise moving or utilizing \$447,502.67 that was wired to Defendant Colon's Discover Bank account in error.

A proposed temporary injunction, complying with Rules 683 and 684, is attached. *See Office of Att'y Gen.*, 257 S.W.3d at 697. Among other things, that proposed order includes a proposed date for a trial on the merits with respect to the ultimate relief sought. *See Tex. R. Civ. P.* 683.

Respectfully submitted,

ARNOLD & ITKIN LLP

/s/ Kurt Arnold

Kurt Arnold

SBN: 24036150

karnold@arnolditkin.com

Jason A. Itkin

SBN: 24032461

jitkin@arnolditkin.com

Roland Christensen

SBN: 24101222

rchristensen@arnolditkin.com

Alec J. Paradowski

SBN: 24124773
aparadowski@arnolditkin.com
6009 Memorial Drive
Houston, Texas 77007
Telephone: (713) 222-3800
Facsimile: (713) 222-3850
e-service@arnolditkin.com

Counsel For Plaintiff

CAUSE NO. 2023-85100

ARNOLD & ITKIN, LLP

Plaintiff,

v.

DISCOVER FINANCIAL SERVICES
D/B/A DISCOVER BANK and
ANTHONY COLON,

Defendants.

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IN THE DISTRICT COURT OF


HARRIS COUNTY, TEXAS

125th JUDICIAL DISTRICT

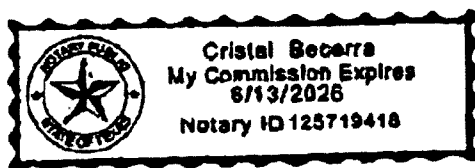
DECLARATION OF ALEC PARADOWSKI


My name is Alec Paradowski. I am over eighteen years of age, am of sound mind, and am capable of making this declaration. I am an attorney at Arnold & Itkin, LLP.

I have read the above Application for Temporary Injunction. I verify that the facts stated herein are within my personal knowledge and are true and correct.


Alec Paradowski

Sworn and subscribed before me on December 20, 2023.




Notary Public, State of Texas

CERTIFICATE OF SERVICE

This is to certify that on this 20th day of December, 2023, a true and correct copy of the above and foregoing was likewise served by email/certified mail to the following parties:

Anthony Colon - poppycolonpromotions@gmail.com
1316 Greenridge Ave.
Lithonia, GA 30058

6244 Redan Overlook
Lithonia, GA 30058

2216 Medlock Ln.
McDonough, GA 30253

219 Maple St. NW
Atlanta, GA 30314

Discover Financial Services d/b/a Discover Bank
C/O Richard Keller - rkeller@burr.com
BURR FORMAN, LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203

/s/ Kurt Arnold

Kurt Arnold

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Cristal Becerra on behalf of Kurt Arnold

Bar No. 24036150

cbecerra@arnolditkin.com

Envelope ID: 82760980

Filing Code Description: No Fee Documents

Filing Description: Plaintiff's Application for a Temporary Injunction

Status as of 12/20/2023 2:20 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Roland Christensen		rchristensen@arnolditkin.com	12/20/2023 1:14:48 PM	SENT
Cristal Becerra		cbecerra@arnolditkin.com	12/20/2023 1:14:48 PM	SENT
Alec Paradowski		aparadowski@arnolditkin.com	12/20/2023 1:14:48 PM	SENT

CAUSE NO. 2023-85100

ARNOLD & ITKIN, LLP	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
DISCOVER FINANCIAL SERVICES	§	
D/B/A DISCOVER BANK and	§	
ANTHONY COLON,	§	
	§	
<i>Defendants.</i>	§	125 th JUDICIAL DISTRICT

TEMPORARY INJUNCTION

This Court, having considered Plaintiff Arnold & Itkin, LLP’s Application for a Temporary Injunction and all evidence and arguments of counsel with notice to Defendants Anthony Colon and Discover Financial Services d/b/a Discover Bank, is of the opinion that immediate and irreparable injury, loss, or damage will result to Arnold & Itkin, LLP unless Defendants Discover Financial Services, d/b/a Discover Bank and Anthony Colon are temporarily restrained in the specifically limited manner as set forth below. The Court therefore **GRANTS** Arnold & Itkin, LLP’s Application for a Temporary Injunction.

I.

Background

This litigation centers around proceeds from a litigation settlement in the amount of \$447,502.67 being fraudulently obtained and not returned. On December

20, 2023, Arnold & Itkin, LLP filed with this Court an Application for a Temporary Injunction. The Court held a hearing on Plaintiff's Application for Temporary Injunction on _____.

II.

Temporary Relief is Necessary to Prevent Immediate and Irreparable Harm

The issuance of a temporary injunction that temporarily enjoins Defendants Anthony Colon and Discover Financial Services d/b/a Discover Bank from transferring, spending, withdrawing, or otherwise moving or utilizing \$447,502.67 that was wired to Defendant Colon's Discover Bank account in error is appropriate here. Plaintiff has pled and proved (1) a cause of action against the defendants; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *See Tex. Black Iron, Inc. v. Arawak Energy Int'l Ltd.*, 527 S.W.3d 579, 584 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

Immediate and irreparable injury, loss, or damage will result to Plaintiff absent issuance of this temporary injunction. Defendant Colon would otherwise be permitted to spend the \$447,502.67 in his bank account with Defendant Discover Bank at will and become insolvent. *Tex. Black Iron, Inc. v. Arawak Energy Int'l Ltd.*, 527 S.W.3d 579, 587 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

III.

Order

Arnold & Itkin, LLP's Application for a Temporary Injunction is **GRANTED**. It is thereby **ORDERED** that the Clerk of this Court issue a Temporary Injunction, operative until a final order is entered on this case, and pending the trial on the merits ordered below, restraining Defendants Colon and Discover Bank from transferring, spending, withdrawing, or otherwise moving or utilizing \$447,502.67 that was wired to Defendant Colon's Discover Bank account in error.

Arnold & Itkin, LLP shall, prior to the issuance of the injunction, file with the Clerk a bond executed by Plaintiff in the sum of \$500.00, payable to Defendants, approved and conditioned as the law requires.

It is further **ORDERED** that a trial on the merits will be held on the __ day of _____, 2024, at _____.

SIGNED this ____ day of _____, 202__.

Honorable Presiding Ancillary Judge

2/13/2024 5:35 PM
Marilyn Burgess - District Clerk Harris County
Envelope No. 84477847
By: JIMMY RODRIGUEZ
Filed: 2/13/2024 5:35 PM

CAUSE NO. 2023-85100

ARNOLD & ITKIN, LLP

Plaintiff,

v.

DISCOVER FINANCIAL SERVICES
D/B/A DISCOVER BANK and
ANTHONY COLON,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

125th JUDICIAL DISTRICT

NOTICE OF HEARING

PLEASE TAKE NOTICE that Plaintiff's Application for a Temporary Injunction (Filed 12/20/2023) will be heard by oral hearing on **Friday, March 8, 2024 at 11:00 a.m.** before the 125th Judicial District Court of Harris County, Texas.

Respectfully submitted,

ARNOLD & ITKIN LLP

/s/ Kurt Arnold

Kurt Arnold

SBN: 24036150

karnold@arnolditkin.com

Jason A. Itkin

SBN: 24032461

jitkin@arnolditkin.com

Roland Christensen

SBN: 24101222

rchristensen@arnolditkin.com

Alec J. Paradowski

SBN: 24124773

aparadowski@arnolditkin.com

6009 Memorial Drive

Houston, Texas 77007

Telephone: (713) 222-3800

Facsimile: (713) 222-3850

e-service@arnolditkin.com

Counsel For Plaintiff

CERTIFICATE OF SERVICE

This is to certify that on this 13th day of February, 2024, a true and correct copy of the above and foregoing was likewise served by email/certified mail to the following parties:

Anthony Colon - poppycolonpromotions@gmail.com
1316 Greenridge Ave.
Lithonia, GA 30058

6244 Redan Overlook
Lithonia, GA 30058

2216 Medlock Ln.
McDonough, GA 30253

219 Maple St. NW
Atlanta, GA 30314

Discover Financial Services d/b/a Discover Bank
C/O Richard Keller - rkeller@burr.com
BURR FORMAN, LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203

/s/ Kurt Arnold
Kurt Arnold

Automated Certificate of eService

This automated certificate of service was created by the eFiling system.

- The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Cristal Becerra on behalf of Kurt Arnold

Bar No. 24036150

cbecerra@arnolditkin.com

Envelope ID: 84477847

Filing Code Description: Notice

Filing Description: Notice of Hearing

Status as of 2/14/2024 7:35 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Roland Christensen		rchristensen@arnolditkin.com	2/13/2024 5:35:48 PM	SENT
Cristal Becerra		cbecerra@arnolditkin.com	2/13/2024 5:35:48 PM	SENT
Alec Paradowski		aparadowski@arnolditkin.com	2/13/2024 5:35:48 PM	SENT
Macarena Palma		mpalma@arnolditkin.com	2/13/2024 5:35:48 PM	SENT

2/14/2024 11:05:09 AM
 Marilyn Burgess - District Clerk
 Harris County
 Envelope No: 84496178
 By: PEREZ, GERARDO
 Filed: 2/14/2024 11:05:09 AM

Marilyn Burgess - Harris County District Clerk

Request for Issuance of Service

CASE NUMBER: 2023-85100 CURRENT COURT: 125th District Court

Name(s) of Documents to be served: Plaintiff's Original Petition

FILE DATE: 02/14/2024 Month/Day/Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

Issue Service to: Anthony Colon

Address of Service: 1316 Greenridge Ave.

City, State & Zip: Lithonia, GA 30058

Agent (if applicable) _____

TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the proper Box)

- ☒ Citation ☐ Citation by Posting ☐ Citation by Publication ☐ Citations Rule 106 Service
☐ Citation Scire Facias ☐ Newspaper _____
☐ Temporary Restraining Order ☐ Precept ☐ Notice
☐ Protective Order
☐ Secretary of State Citation (\$12.00) ☐ Capias (not an E-Issuance) ☐ Attachment
☐ Certiorari ☐ Highway Commission (\$12.00)
☐ Commissioner of Insurance (\$12.00) ☐ Hague Convention (\$16.00) ☐ Garnishment
☐ Habeas Corpus ☒ Injunction ☐ Sequestration
☐ Subpoena
☐ Other (Please Describe) _____

(See additional Forms for Post Judgment Service)

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP (phone) _____ ☐ CONSTABLE
☐ MAIL to attorney at: _____
☐ CERTIFIED MAIL by District Clerk ☒ E-Issuance by District Clerk (No Service Copy Fees Charged)
 (Note:) CAPIAS is not an E-Issuance Option
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____ Phone: _____
☐ OTHER , explain _____

Issuance of Service Requested By: Attorney/Party Name: Kurt Arnold Bar # or ID 24036150

Mailing Address: 6009 Memorial Drive, Houston, Texas 77007

Phone Number: 713.222.3800

County
ope No: 84
REZ, GER
2/14/2024

CASE NUMBER: 2023-85100 **CURRENT COURT:** 125th District Court

FILE DATE: 02/14/2024 Month/Day/Year

Issue Service to: Discover Financial Services d/b/a Discover Bank

Address of Service: 1999 Bryan St., Ste. 900

City, State & Zip: Dallas, Texas 75201

Agent (if applicable) CT Corporation System

TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the proper Box)

- | | | | |
|---|--|--|---|
| <input checked="" type="checkbox"/> Citation | <input type="checkbox"/> Citation by Posting | <input type="checkbox"/> Citation by Publication | <input type="checkbox"/> Citations Rule 106 Service |
| <input type="checkbox"/> Citation Scire Facias | <input type="checkbox"/> Newspaper _____ | | |
| <input type="checkbox"/> Temporary Restraining Order | <input type="checkbox"/> Precept | <input type="checkbox"/> Notice | |
| <input type="checkbox"/> Protective Order | | | |
| <input type="checkbox"/> Secretary of State Citation (\$12.00) | <input type="checkbox"/> Capias (not an E-Issuance) | <input type="checkbox"/> Attachment | |
| <input type="checkbox"/> Certiorari | <input type="checkbox"/> Highway Commission (\$12.00) | | |
| <input type="checkbox"/> Commissioner of Insurance (\$12.00) | <input type="checkbox"/> Hague Convention (\$16.00) | <input type="checkbox"/> Garnishment | |
| <input type="checkbox"/> Habeas Corpus | <input checked="" type="checkbox"/> Injunction | <input type="checkbox"/> Sequestration | |
| <input type="checkbox"/> Subpoena | | | |
| <input type="checkbox"/> Other (Please Describe) _____ | | | |

(See additional Forms for Post Judgment Service)

SERVICE BY (check one):

- ☐ **ATTORNEY PICK -UP** (phone) _____ ☐ **CONSTABLE**
- ☐ **MAIL to attorney** at: _____
- ☐ **CERTIFIED MAIL** by District Clerk ☒ **E-Issuance by District Clerk** (No Service Copy Fees Charged)
- (Note:) **CAPIAS is not an E-Issuance Option**
- ☐ **CIVIL PROCESS SERVER** - Authorized Person to Pick-up: _____ Phone: _____
- ☐ **OTHER** , *explain* _____

Issuance of Service Requested By:Attorney/Party Name: Kurt Arnold Bar # or ID 24036150

Mailing Address: 6009 Memorial Drive, Houston, Texas 77007

Phone Number: 713.222.3800

County
 Case No: 84
 REZ, GER
 2/14/2024

CASE NUMBER: 2023-85100 **CURRENT COURT:** 125th District Court

FILE DATE: 02/14/2024 Month/Day/Year

Issue Service to: Discover Financial Services d/b/a Discover Bank

Address of Service: 208 South LaSalle St., Suite 814

City, State & Zip: Chicago, IL 60604

Agent (if applicable) CT Corporation System

TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the proper Box)

- | | | | |
|---|--|--|---|
| <input checked="" type="checkbox"/> Citation | <input type="checkbox"/> Citation by Posting | <input type="checkbox"/> Citation by Publication | <input type="checkbox"/> Citations Rule 106 Service |
| <input type="checkbox"/> Citation Scire Facias | <input type="checkbox"/> Newspaper _____ | | |
| <input type="checkbox"/> Temporary Restraining Order | <input type="checkbox"/> Precept | <input type="checkbox"/> Notice | |
| <input type="checkbox"/> Protective Order | | | |
| <input type="checkbox"/> Secretary of State Citation (\$12.00) | <input type="checkbox"/> Capias (not an E-Issuance) | <input type="checkbox"/> Attachment | |
| <input type="checkbox"/> Certiorari | <input type="checkbox"/> Highway Commission (\$12.00) | | |
| <input type="checkbox"/> Commissioner of Insurance (\$12.00) | <input type="checkbox"/> Hague Convention (\$16.00) | <input type="checkbox"/> Garnishment | |
| <input type="checkbox"/> Habeas Corpus | <input type="checkbox"/> Injunction | <input type="checkbox"/> Sequestration | |
| <input type="checkbox"/> Subpoena | | | |
| <input type="checkbox"/> Other (Please Describe) _____ | | | |

(See additional Forms for Post Judgment Service)

SERVICE BY (check one):

- ☐ **ATTORNEY PICK -UP** (phone) _____ ☐ **CONSTABLE**
☐ **MAIL to attorney** at: _____
☐ **CERTIFIED MAIL** by District Clerk ☒ **E-Issuance by District Clerk** (No Service Copy Fees Charged)
 (Note:) **CAPIAS is not an E-Issuance Option**
☐ **CIVIL PROCESS SERVER** - Authorized Person to Pick-up: _____ Phone: _____
☐ **OTHER** , *explain* _____

Issuance of Service Requested By:Attorney/Party Name: Kurt Arnold Bar # or ID 24036150

Mailing Address: 6009 Memorial Drive, Houston, Texas 77007

Phone Number: 713.222.3800

CAUSE NO. 2023-85100

ARNOLD & IKTIN, LLP

Plaintiff,

v.

DISCOVER FINANCIAL SERVICES
D/B/A DISCOVER BANK and
ANTHONY COLON,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

125TH JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

COMES NOW Arnold & Itkin, LLP ("Plaintiff") complaining of Discover Financial Services d/b/a Discover Bank and Anthony Colon ("Defendant") and will respectfully show the Court the following:

I.

NATURE OF ACTION

1. This is an action to recover damages Plaintiff lost because of Defendants' fraud and negligence related to a bank wire transaction.

II.

DISCOVERY

2. Discovery in this matter may be conducted under Level 2 of the Texas Rules of Civil Procedure.

III.

JURISDICTION AND VENUE

3. Plaintiff's claims arise under the laws of Texas.

4. The Court has jurisdiction over this case because Plaintiff seeks damages within the jurisdictional limits of this Court and Plaintiffs were fraudulently induced to wire the money from its bank in Texas. Defendant Colon, by attempting to hire a Harris County, Texas law firm and receiving money from a Texas-based law firm and its Texas bank branch, purposefully availed himself of the privilege of conducting activities within Texas. Further, Defendant Discover Financial Services d/b/a Discover Bank maintains continuous and systematic contacts within Texas including maintaining branches and ATMs in Texas and sending and receiving wire transfers and other transactions to and from Texas. Discover Bank also advertises and solicits business directly to consumers in Texas.

5. Venue is proper in this County pursuant to Texas Civil Practice and Remedies Code Sections 15.002(a)(3) because a substantial portion of the events giving rise to this lawsuit occurred in Harris County, Texas.

IV.

PARTIES

6. Plaintiff is a limited partnership in Houston, Texas.

7. Defendant Anthony Colon is a natural person and resident of Lithonia, GA. Defendant Colon may be served with process at 1316 Greenridge Ave., Lithonia, GA 30058 or wherever he may be found.

8. Defendant Discover Financial Services d/b/a Discover Bank (“Discover Bank”) is a foreign corporation that maintains continuous and systematic contacts with Texas. Defendant Discover Financial Services d/b/a Discover Bank may be served with process

through its registered agent, CT Corporation System, 1999 Bryan St., Ste. 900 Dallas, Texas 75201 or CT Corporation System, 208 South LaSalle St., Suite 814, Chicago, IL 60604.¹

V.

FACTS

9. On or about September 12, 2023, Defendant Colon received an email from Plaintiff regarding settlement proceeds for a lawsuit. Plaintiff had settled the personal-injury lawsuit of a different Anthony Colon prior to that date and sent an email regarding this lawsuit and the proceeds non-party Anthony Colon was to receive for that lawsuit. Defendant Colon fraudulently represented himself as the Anthony Colon entitled to the settlement proceeds and provided his own signature and bank account information.

10. Upon Plaintiff's receipt of the fraudulently signed document, Plaintiff called Defendant Colon to confirm the bank account information to wire the settlement proceeds to. Defendant Colon again fraudulently represented himself to be the Anthony Colon entitled to the lawsuit settlement proceeds. Based on Defendant Colon's fraudulent representations, Plaintiff instructed its bank to wire \$447,502.67 in settlement proceeds to Defendant Colon's bank account held by Discover Bank.

11. Upon realizing that Defendant Colon had fraudulently represented himself to be the beneficiary of the settlement proceeds, Plaintiff called Defendant Colon and requested the funds be returned. Plaintiff also called Defendant Discover Bank alerting them that Defendant

¹ Discover Bank's website provides the mailing address for service of civil subpoenas: <https://www.discover.com/company/our-company/assets/registered-agents.html#:~:text=Discover%20Financial%20Services%2C%20Inc.>

Colon was not entitled to the funds and requesting the funds in Defendant Colon's account be frozen and returned to Plaintiff.

12. Despite several calls and letters, Defendants refused to return the settlement proceeds they knew had been sent in error. Defendants have known since at least October 18, 2023, that the funds were wired to Defendant Colon based on his fraudulent representations as the Anthony Colon entitled to the settlement proceeds but have refused to return the funds to Plaintiff.

VI.

CAUSES OF ACTION

A. Negligence against Discover Bank.

13. Plaintiff repeats and re-alleges each allegation contained above.

14. Defendant is negligent and grossly negligent for the following reasons:

- a. Failure to freeze the funds in Defendant Colon's bank account, even after they were put on notice of Defendant Colon's fraudulent activity;
- b. Failure to investigate whether Defendant Colon fraudulently represented himself to be entitled to the settlement proceeds;
- c. Failure to return the fraudulently obtained funds from Defendant Colon's bank account; and
- d. Other acts deemed negligent.

15. Defendant owed Plaintiff a legal duty of the foregoing.

16. Defendant breached these duties, and as a direct and proximate result of Defendant's breaches of duty caused Plaintiff to lose \$447,502.67. Defendant has been on

notice of Defendant Colon's fraudulent activity since at least October 18, 2023, but has refused to return the funds.

B. Fraud against Defendant Colon

17. Plaintiff repeats and re-alleges each allegation contained above.

18. Defendant Colon is liable to Plaintiff for fraud for the following reasons. Defendant Colon represented himself to Plaintiff as the Anthony Colon entitled to the settlement proceeds Plaintiff secured on behalf of non-party Anthony Colon. This representation was material because Plaintiff would not have wired the money to Defendant Colon had they known Defendant Colon was not entitled to the settlement proceeds. Defendant Colon's representation was false, and he either knew the representation was false or made the representation recklessly without knowledge of its truth. Defendant Colon made the representation intending for Plaintiff to act on the representation and wire him the settlement proceeds he was not entitled to, and Plaintiff relied on the representation and wired the settlement proceeds to Defendant Colon.

19. Defendant Colon's fraud caused Plaintiff to lose \$447,502.67. Absent Defendant Colon's fraud, Plaintiff would not have wired the money to him.

20. Plaintiff is also entitled to exemplary damages for Defendant Colon's fraud.

VII.

DAMAGES

21. As a result of said occurrences, Plaintiff sustained economic losses of \$447,502.67. Plaintiff is also entitled to exemplary damages for Defendant Colon's fraud.

VIII.

JURY TRIAL

22. Plaintiff hereby requests a trial by jury on all claims and submits his jury fee herewith.

IX.

PRAYER

23. Plaintiff prays that this citation issue and be served upon Defendants in a form and manner prescribed by law, requiring Defendants appear and answer, and that upon final hearing, Plaintiff has judgment against Defendants in a total sum in excess of the minimum jurisdictional limits of this Court, plus pre-judgment and post-judgment interests, all costs of Court, and all such other relief to which Plaintiff show himself justly entitled. As required by Rule 47 of the Texas Rules of Civil Procedure, Plaintiff affirmatively states that he seeks damages in excess of \$1,000,000 and prays for relief and judgment, as follows:

- a. Compensatory damages against Defendants;
- b. Actual damages;
- c. Consequential damages;
- d. Exemplary damages;
- e. Loss of wages past and future;
- f. Interest on damages (pre- and post-judgment) in accordance with law;
- g. Plaintiffs' reasonable attorneys' fees;
- h. Costs of court;
- i. Expert witness fees;
- j. Costs of copies of depositions; and

k. Such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

ARNOLD & ITKIN LLP

/s/ Kurt Arnold

Kurt Arnold
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ATTORNEYS FOR PLAINTIFF

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Cristal Becerra on behalf of Kurt Arnold
Bar No. 24036150
cbecerra@arnolditkin.com
Envelope ID: 84496178
Filing Code Description: Amended Filing
Filing Description: Plaintiff's Original Petition
Status as of 2/14/2024 11:33 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Roland Christensen		rchristensen@arnolditkin.com	2/14/2024 11:05:09 AM	SENT
Cristal Becerra		cbecerra@arnolditkin.com	2/14/2024 11:05:09 AM	SENT
Alec Paradowski		aparadowski@arnolditkin.com	2/14/2024 11:05:09 AM	SENT
Macarena Palma		mpalma@arnolditkin.com	2/14/2024 11:05:09 AM	SENT

COPY OF PLEADING PROVIDED BY FIC

RECEIPT No. 989084 TR# 74289098

Plaintiff:

ARNOLD & ITKIN LLP

vs.

Defendant:

DISCOVER FINANCIAL SERVICES (D/B/A DISCOVER BANK)

In The 125th

Judicial District Court of

Harris County, Texas

201 CAROLINE

Houston, Texas

CITATION (NON-RESIDENT CORPORATE)

THE STATE OF TEXAS

County of Harris

To: DISCOVER FINANCIAL SERVICES (D/B/A DISCOVER BANK) C/O CT CORPORATION SYSTEM
208 SOUTH LASALLE ST SUITE 814, CHICAGO IL 60604

Attached is a copy of: PLAINTIFF'S ORIGINAL PETITION

This instrument was filed on February 14, 2024 in the above cited cause number and court.
The instrument attached describes the claim against you.

YOU HAVE BEEN SUED. You may employ an attorney. If you or your Attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration date of 20 days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.

TO OFFICER SERVING:

This citation was issued on February 14, 2024, under my hand and seal of said court.

Issued at the request of:

ARNOLD, KURT BRYNILDE
6009 MEMORIAL DRIVE
HOUSTON, TX 77007
713-222-3800
Bar Number: 24036150

*Marilyn Burgess*

Marilyn Burgess, District Clerk

Harris County, Texas
201 CAROLINE, Houston, TX 77002
(PO Box 4651, Houston, TX
77210)

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Tracking Number: 74289098

CAUSE NUMBER: 202385100

PLAINTIFF: ARNOLD & ITKIN LLP

In the 125th

vs.

Judicial District Court of

DEFENDANT: DISCOVER FINANCIAL SERVICES (D/B/A DISCOVER BANK)

Harris County, Texas

OFFICER - AUTHORIZED PERSON RETURN

Came to hand at _____ o'clock ____ M. on the _____ day of _____,
20____. Executed at

(Address) _____

_____ in

_____ County at o'clock ____ M. On the _____ day of
_____, 20____, by

Delivering to _____ defendant, in person, a true
copy of this Citation together with the accompanying _____ copy(ies) of the Petition.
Petition attached thereto and I endorsed on said copy of the Citation the date of delivery.

To certify which I affix my hand officially this _____ day of
_____, 20.

Fees \$ _____

By _____
Affiant

Deputy

On this day, _____, known to me to be the
person whose signature appears on the foregoing return, personally appeared. After being by
me duly sworn, he/she stated that this citation was executed by him/her in the exact manner
recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, On this _____ day of _____,
20__

Notary Public